

## Internal Revenue Service

Number: **201532015**

Release Date: 8/7/2015

Index Number: 1362.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-133916-14

Date:

March 02, 2015

## LEGEND

Company =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated July 25, 2014, and subsequent correspondence, submitted on behalf of Company by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

### FACTS

Company was incorporated under State law on Date 1. Company elected to be an S corporation as of Date 2. On Date 3, Trust 1, Trust 2, Trust 3, and Trust 4 (collectively the "Trusts") received shares of Company. The beneficiaries of the Trusts failed to make timely elections for the Trusts to be treated as Qualified Subchapter S Trusts (QSSTs). As a result, Company's S corporation election terminated as of Date 3.

Company represents that the termination was inadvertent and not motivated by tax avoidance or retroactive tax planning. For all relevant taxable years, Company and Company's shareholders filed their Federal income tax returns consistent with Company qualifying as an S corporation, and the Trusts have filed consistent with the Trusts having valid QSST elections in effect as of Date 3. In addition, Company and Company's shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

### LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that, for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(d)(1) provides, in pertinent part, that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2): (A) the trust is treated as a trust described in § 1361(c)(2)(A)(i) and (B) for purposes of § 678(a), the beneficiary of the trust is treated as the owner of that portion of the trust which consists

of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(2)(A) provides that a beneficiary of a QSST (or his legal representative) may elect to have § 1361(d) apply.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in pertinent part, that if (1) an election under 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company's S corporation election terminated on Date 3 because the beneficiaries of the Trusts failed to make elections under § 1361(d)(2)(A) for the Trusts. We also conclude that the termination of Company's S corporation election was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), Company will be treated as continuing to be an S corporation from Date 3 and thereafter, provided that Company's S corporation election was valid and was not otherwise terminated under § 1362(d), and provided that the

beneficiaries of the Trusts file an election under § 1361(d)(2)(A) for their respective trust with an effective date of Date 3 with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the elections under § 1361(d)(2)(A).

Except as expressly provided herein, we express or imply no opinion concerning the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether the Trusts are otherwise eligible to be QSSTs or whether Company is otherwise eligible to be an S corporation for Federal tax purposes.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representatives.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

/s/

Holly Porter  
Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: